

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re:)
)
Clarification of the Territorial)
Exclusivity of Rule 73.658(b) as Applied)
to NBC Network Programming in Certain)
Identified Television Markets)

MB Dckt 04-75

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Federal Communications Commission
Office of the Secretary

To. The Media Bureau

**COMMENTS OF SUNBELT COMMUNICATIONS COMPANY
TO REQUEST FOR EXPEDITED DECLARATORY RULING**

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SUMMARY

The Commission has asked for Comments concerning the Network Territorial Exclusivity Rule (73 658(b)), which states in part that:

No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another broadcast station located in the same community from broadcasting the network's programs not taken by the former station, or which prevents or hinders another broadcast station located in a different community from broadcasting any program of the network organization.

This proceeding was spawned by a Request for Expedited Declaratory Ruling filed on February 25, 2004, by Max Media of Montana LLC ("Max") in anticipation of the impending loss of the NBC network affiliation by station KTGF(TV), Great Falls, Montana, which is licensed to Max. About the only material and accurate offered by in its filings is the fact that NBC has advised KTGF(TV) that its NBC affiliation will terminate in July 2005. However, as demonstrated in the following Comments of Sunbelt Communications Company ("Sunbelt"), the loss of the NBC affiliation by KTGF(TV) is a result of normal and expected market forces and the private business decisions of NBC and Sunbelt, a process that in no way can be considered a violation of 73 658(b)

The Commission's goal in the network territorial exclusivity rule is to ensure that television viewers are not denied access to network programming through station-network contractual arrangements. The Commission has no concern as to which licensee provides the programming. In this instance, the only change is that viewers in the Great Falls DMA will receive NBC programming from Sunbelt stations, not from Max and KTGF(TV). Obviously, if Max has any legitimate concern that it has been wronged by the conduct of NBC or Sunbelt, it has ready access to the judicial system, which is the proper forum, not the FCC

Sunbelt is the parent of Beartooth Communications Company ("Beartooth"), which is the licensee of full service station KTVH(TV), Helena, Montana. Beartooth is also the licensee of full service stations KBAO(TV), Lewistown, Montana and KBBJ(TV), Havre, Montana, both of which are NBC satellites of KTVH(TV), and has filed an application for a new channel 12 booster station

in Great Falls. With this combination of service to the Great Falls market and upgraded news service for the market, NBC has advised Sunbelt that it will replace Max as the primary NBC affiliate in the Great Falls market. In short, no contract or other agreement exists that deprives viewers in the Great Falls market from receiving NBC network service; all that is involved is a decision by NBC to switch its affiliates in that market.

The Commission has rightly interpreted 73.658(b) not to sanction agency intervention in the normal contractual business decisions of networks and their affiliates. Based on events to date and the record that will be developed in this proceeding, there is no reason for the Commission to spring to the aid of Max in Great Falls, Montana. As noted in *Letter to Eugene F. Mullin*, 10 FCC Rcd 4416, 4418 (MMB 1995)

The Commission's territorial exclusivity rule was not adopted to guarantee a station the right to carry network programming. Rather, in adopting this rule, the Commission was aware of the economic factors that play a role in network affiliation decisions. The territorial exclusivity rule was adopted only to give stations the "maximum opportunity" to "compete for network programming." ... In adopting this rule, the Commission recognized that "the important part that economics play in network-station contractual relationships will continue to function." ... In cases applying this rule, the Commission reaffirmed that networks have no obligation to affiliate with a particular station and that the Commission will not ordinarily interfere with the business judgments of networks. (citations omitted.)

The Commission should expeditiously resolve this matter and, just as expeditiously, proceed with the processing and grant of Sunbelt's related applications, in particular, its application for a new channel 12 booster facility in Great Falls, Montana.

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Sunbelt Communications Company ("Sunbelt"), by its attorneys, submits its Comments to the "Request for Expedited Declaratory Ruling" (the "Request") filed by Max Media of Montana LLC ("Max"), licensee of KTGF(TV), Great Falls, Montana. While the Commission is seeking comment on the territorial exclusivity limits of network affiliation contracts under Section 73.658(b) of the Commission's rules,¹ Max's only focus is on discussions between Sunbelt and NBC Television Network ("NBC") concerning the NBC affiliation in the Great Falls Designated Market Area ("DMA"), which KTGF(TV) is about to lose

¹ The relevant portion of Section 73.658(b) of the Rules provides:

No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another broadcast station located in the same community from broadcasting the network's programs not taken by the former station, or which prevents or hinders another broadcast station located in a different community from broadcasting any program of the network organization. . . . As employed in this paragraph, the term 'community' is defined as the community specified in the instrument of authorization as the location of the station.

INTRODUCTION

1. NBC has advised Max that it will not renew the NBC affiliation on KTGF(TV); and the current agreement will expire in July 2005. NBC has indicated to Sunbelt that it would authorize it to serve as the NBC affiliate for the Great Falls DMA beginning in July 2005, provided Sunbelt improves its off-air service in the Great Falls metropolitan area and establishes a competitive news bureau there.² As shown herein, any negotiations between Sunbelt and NBC for future affiliations, and any existing affiliation agreements between NBC and Sunbelt, not only comply with the Commission's interpretation and application of the network territorial exclusivity rules, but also are the result of wholly private business negotiations that the Commission recognizes should be left to the marketplace, free of government intervention. Any economic harm to Max as a result of losing the NBC affiliation for KTGF(TV) is a direct result of its own business practices and NBC's preference for Sunbelt as a partner, and in no way is attributable to a violation of the network territorial exclusivity rules.³ Indeed, the very basis of

² Sunbelt's subsidiary, Beartooth Communications Company ("Beartooth"), is the licensee of KTVH(TV), Helena, Montana, currently an NBC affiliate. Sunbelt is the licensee of two television satellite stations in the Great Falls DMA – KBAO(TV), Lewistown, Montana, and KBBJ(TV), Havre, Montana, both of which rebroadcast KTVH(TV) and the associated NBC programming. In addition, the signal of KTVH(TV) provides predicted Grade B coverage over Great Falls proper. Because Great Falls is located in a "bowl," Beartooth has filed an application for a new television booster station to improve the KTVH coverage in Great Falls. See File No. BNPTVB-20030915ACY (the "KTVH Booster Application").

³ Sunbelt's Comments focus primarily on the interpretation of the Commission's network territorial exclusivity rules. However, because of the numerous other pleadings currently on file by Max and its parent company Max Media, LLC ("Max Media"), Sunbelt is concerned that this Declaratory Ruling is less a serious effort seeking interpretation of the Commission's territorial exclusivity rules than a continued ad hoc attack on Sunbelt and its subsidiaries in a vain attempt by Max to block Sunbelt from successfully competing in the Great Falls and Helena markets. So far, Max Media and/or its subsidiaries have filed an informal objection against the KTVH Booster Application, a further informal objection against the KTVH Booster Application; a Petition to Revoke and Deny numerous licenses, authorizations and applications of Beartooth, a Supplement to the above-referenced Petition to Revoke and Deny; and a Petition to Deny the proposed transfer of control of KCWY(TV), Casper Wyoming. Sunbelt and its relevant subsidiaries have submitted responsive pleadings to the various Max filings. All these matters

this proceeding is suspect. Apparently, during ex parte meetings with the Commission staff, Max “indicated” it was seeking a declaratory ruling rather than a specific enforcement claim; its related conduct belies this claim⁴

BACKGROUND

2. **History of Max and NBC.** When Max became the licensee of KTGF(TV) on March 1, 2001, it inherited an existing NBC affiliation agreement, dated April 5, 1996, that is set to expire in July 2005. *See* Request, Exhibit B. John Damiano, NBC Executive Vice President of Affiliate Relations, sent a letter dated September 1, 2001, to Mr. A Eugene Loving, Chairman and CEO of Max Media, indicating that upon the expiration of the KTGF(TV) affiliation agreement, it was going to explore affiliating with another station for coverage in the Great Falls DMA, including a grant to Beartooth provided certain criteria were met. *See* Request, Exhibit 2.

As Mr. Damiano pointed out to Mr. Loving, however, “[i]f these criteria are not satisfied, NBC will use its business judgment and discretion to determine which station it wishes to be the NBC affiliate, as it has traditionally done upon the expiration of affiliation agreements.” *Id.* A follow-up electronic mail sent to Mr. Damiano from another NBC employee, Jean Dietze, on September 9, 2003, which was somehow obtained by Mr. Loving, indicated that Sunbelt was on its way to meeting the requisite criteria (as noted above, the KTVH Booster Application was on file and would improve service in Great Falls), and that it was NBC’s plan not to renew the KTGF(TV) affiliation. Therefore, NBC indicated it intended to provide notice of termination to Max Media by July 2004, a year before the KTGF(TV) affiliation agreement expires. *See* Request, Exhibit 3.

Finally, a letter was sent from Randel A. Falco, Group President of NBC, to Mr. Loving, responding to what appears to be a threatening letter previously sent by Mr. Loving. *See* Request,

remain pending before the Commission

⁴ *See* Permit But Disclose Notice, DA 04-747, p. 2 (released March 19, 2004)

Exhibit 4. As noted in the letter

NBC's future in Great Falls as in any market when a contract expires is at our own discretion for whatever reasons we may have. Networks and stations alike have that same right as contracts terminate.

Id.

3 This turn of events was what apparently led Max to filing its Request on February 25, 2004. On March 10, 2004, Sunbelt filed an Opposition to Max's Request. For convenience, a copy of Sunbelt's Opposition is attached hereto as Attachment 1. Sunbelt noted that Max did not appear to be seeking clarification of Section 73.658(b) of the Commission's Rules, but was instead seeking to intrude upon the private business decisions of Sunbelt and NBC and prevent it and its subsidiary from competing in the Great Falls market. Now that the FCC seeks comment on its interpretation of its rules, Sunbelt is prepared to put aside its prior objection, will participate fully in this proceeding, and supports Max's request that this matter, and Sunbelt's contested applications, be resolved in an expeditious manner.⁵ Sunbelt urges the Commission, however, to ensure that this proceeding not be misused by Max or other parties for any further attacks on Sunbelt and its licensee subsidiaries.⁶

⁵ In light of the request for expedited processing on the Request, Sunbelt was prepared to ask that the Commission, in fairness, to expedite the processing of at least the KTVH Booster Application. Since the Commission has already moved forward on the KTVH Booster Application (it appeared on the Commission's recent Proposed Grant List as being acceptable for filing, Report No. PGL 04-4 (released April 16, 2004)), such a filing is no longer necessary. Sunbelt appreciates the Commission's prompt processing of the KTVH Booster Application.

⁶ Sunbelt's concerns are not unfounded, as Cordillera Communications, which operates KXLFTV, Butte, Montana, KRTV(TV), Great Falls, Montana, KTVQ(TV), Billings, Montana, and KPAX-TV, Missoula, Montana, filed Comments on April 1, 2004, which it claimed were germane to the Request. However a review of these Comments reveals that Cordillera included nothing about the network territorial exclusivity rule, but instead re-argued points already raised by Cordillera in informal objections directed at Sunbelt and certain of its pending translator/booster applications. To the extent that the Commission has included Sunbelt's related pending applications as part of this proceeding, Cordillera's filing may be appropriate, but it is

ARGUMENT

4 Max's interpretation of the Commission's network territorial exclusivity rules and its attempt to portray NBC and Sunbelt as parties to an illegal arrangement, are wholly at odds with the Commission's general interpretation of 73.658(b) and its treatment in previous reported cases. What is left is Max's attempt to break apart valid negotiations and existing agreements between Sunbelt and NBC, something that the FCC must not allow Max to do.

5. **FCC's Interpretation of Section 73.658(b).** The Commission first applied limits on television-affiliate relationships in 1946,⁷ as a way to ensure television network programming, which was far more limited and scarce than the multiple network service outlets existing today, would be available to as much of the public as possible.⁸ At that time, when far fewer television stations were operating and there were fewer networks, there was a greater need for Commission involvement in ensuring that anticompetitive behavior did not prevent the public from access to television network programming. Now, with a plethora of both networks and television outlets and owners, the underlying rationale for the initial rules is questionable. In fact, as a result of these market changes, the Commission has proposed either deleting or modifying the network

irrelevant as to the interpretation of Section 73.658(b). Obviously, Cordillera, which operates as the CBS affiliate for both the Great Falls and Helena DMAs, with only one station licensed to Great Falls, has reasons for not wanting to side with Max on the main reason in this proceeding, and for not wanting to see Sunbelt and Beartooth compete in the Great Falls and Helena markets.

⁷ See *Amendment of Part 3 of the Commission's Rules*, 11 Fed. Reg. 33 (January 1, 1946), applying the radio network/affiliate rules adopted in the *Report on Chain Broadcasting*, Order No. 37 Docket No. 5060 (1941) (subsequent history omitted), to television

⁸ See *Report and Order*, Docket No. 10989, 12 R.R. 1537 (1955). Prior to the 1955 *Report and Order*, the Commission, following the same language it adopted in its radio exclusivity rules, initially allowed a station to negotiate with a network for programming exclusivity within a station's service contour. The 1955 *Report* modified the scope of exclusivity protection to apply only to a station's community of license instead of the station's service contour, which is the same rule in effect today. At that time, and unlike today, the Commission concluded that the only manner for a television station to survive financially was to have the ability to broadcast network programming, and such programming, unlike today, was very limited.

territorial exclusivity rule in 1988 and 1995

6 **1988 Rulemaking.** In 1988, the FCC revisited a number of its affiliate/network regulations to determine whether they were still needed.⁹ The FCC noted that it believes “that market forces generally are a more effective and efficient means for directing stations in the acquisition of program exclusivity against other broadcast stations than government regulation.”¹⁰ As part of the 1988 NPRM, the Commission considered eliminating 73.658(b) in its entirety for fear it places “unnecessary regulatory restrictions on such agreements that might be better left to the marketplace.”¹¹ Allowing the market to dictate the scope and terms of affiliation agreements was seen as the best way to provide the public with the greatest access to network programming, as “the intent of the networks is to maximize the coverage of their programming.”¹²

7 **1995 Rulemaking** In 1995, the FCC again revisited the level of involvement it should have in regulating broadcast television network agreements and affiliates.¹³ The FCC recognized that the primary purpose of the rule was to ensure that viewers in a given area have access to network programming. However, because of the emergence of cable television and alternative program distributors, limiting the scope of network exclusivity “to promote the flow

⁹ See *Amendments of Parts 73 and 76 of the Commission’s Rules, Further Notice of Proposed Rulemaking*, 3 FCC Rcd 6171 (1988) (“1988 NPRM”).

¹⁰ 1988 NPRM at para. 24. Although this particular observation was made in the context of the non-network territorial exclusivity rules, the FCC noted that similar issues were presented in the network territorial exclusivity rule. *Id.* at para. 39.

¹¹ *Id.* at para. 40.

¹² *Id.* (emphasis added).

¹³ *Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, Notice of Proposed Rulemaking*, 10 FCC Rcd 11951 (1995) (“1995 NPRM”).

of programs from producers to viewers may no longer be necessary because of the video programming alternatives available to consumers.”¹⁴ The FCC no longer proposed to delete 73.658(b), but instead sought comment on expanding the scope of exclusivity from the station’s community of license to either the Grade B contour of the station, the DMA, or some other geographical area, “to more closely approximate a station’s market area.”¹⁵ Although neither proceeding resulted in changes to 73.658(b), it is clear the Commission has serious reservations about the current rule and whether it serves its intended purpose in today’s rapidly changing and expanding marketplace. On at least two occasions the Commission has concluded the underlying rationale for the initial rule is outdated and does not reflect the current marketplace in which broadcast stations compete against each other and against other providers for viewers

8 **Case Treatment of the Network Territorial Exclusivity Rules.** The FCC has published few cases dealing with its interpretation of 73.658(b), confirming that most affiliation agreements and negotiations are left to the marketplace, without unnecessary government intervention. In *Eugene F. Mullin*,¹⁶ the Commission made clear its intent to allow the market to dictate network/affiliate relationships as much as possible. The case involved ABC’s switch of its affiliation in the Phoenix, Arizona market to television station KNXV-TV, Phoenix, Arizona, licensed to Scripps Howard Broadcasting (“Scripps”). ABC had entered into affiliation agreements with Scripps for its stations located in Cleveland, Ohio and Detroit, Michigan. ABC became aware that CBS had offered Scripps its network affiliation in Phoenix if Scripps would

¹⁴ *Id.* at para. 9

¹⁵ *Id.* at para. 49

¹⁶ *Letter to Eugene F. Mullin*, 10 FCC Rcd 4416 (MMB 1995) (“*Mullin Letter*”). Ironically this is the only case cited by Max in its Request, and it provides excellent support *against* Max’s argument that Sunbelt and NBC have violated Section 73.658(b)

switch its affiliations in Cleveland and Detroit. ABC responded by offering Scripps the ABC affiliation in Phoenix, which Scripps accepted. The previous licensee of the ABC affiliate in Phoenix, Media America Corporation ("MAC"), filed a petition to revoke the licenses of Scripps' stations, claiming that ABC and Scripps had entered into a multi-market affiliation agreement involving the three above-referenced markets in violation of the territorial exclusivity provisions of 73.658(b). MAC alleged that ABC's decision to switch affiliates in Phoenix was based not on the merits of which station should be its affiliate there, but was done in order to retain Scripps as the ABC affiliate in Detroit and Cleveland. MAC further alleged that Scripps advised ABC that in order to retain Scripps as its affiliate in Detroit and Cleveland, ABC had to shift the ABC affiliation in Phoenix to Scripps.

9. The Commission denied MAC's petition, finding that the multi-market affiliation agreement in place was not based on some undue level of influence by Scripps over ABC, but was a business choice made in response to the competitive marketplace. There was no attempt by Scripps or ABC to prevent or limit another community from having access to network programming. The Commission noted.

networks have no obligation to affiliate with a particular station and that the Commission will not ordinarily interfere with the business judgments of networks.

* * * * *

A network's decision to switch affiliates in a community of license, even if such a change arises as a result of a multi-market agreement, does not threaten the public's interest in market-based network service and is not the kind of agreement or understanding that falls within the intended scope of [73.658(b)]

Id. at 4417 ¹⁷

¹⁷ Stripped of Max's ancillary and irrelevant arguments, this proceeding really is nothing more than NBC exercising proper business judgment that it would prefer to affiliate with Sunbelt in the Great Falls DMA, provided that KTVH(TV)'s off-air coverage is enhanced by the KTVH Booster Application and that news operations in Great Falls are upgraded. The Commission should not be and is not concerned as to which particular broadcaster provides network service in

Max's attempt to distinguish the *Mullin Letter* by arguing that both the MAC and Scripps station were licensed to the same community, Phoenix, while the Max station and the Sunbelt station are licensed to different cities (Great Falls and Helena), is without merit. This factual distinction is irrelevant to the Commission's determination that as long as communities are not prevented from the ability of viewing network programming, decisions as to which stations become network affiliates is best left to the marketplace and a network's routine business judgment.

10. In another reported case, *The Helen Broadcasting Company*,¹⁸ the licensee of WNAC-TV, Providence, Rhode Island, filed an informal objection against the proposed assignment of WFXT(TV), Boston, Massachusetts. Television station WNAC-TV argued that the assignment would result in WFXT(TV) having exclusive rights to Boston Celtics network programming that would extend beyond Boston into the Providence market, allegedly violating both the Commission's non-network and network territorial exclusivity rules. The FCC dismissed WNAC-TV's complaint noting that:

either the literal language of these rules nor the history of their adoption suggest that they impose any compulsory obligations on program producers and distributors to make programming available in any particular pattern or to any given market. Rather, the rules are intended simply to assure the producer/distributor or network is not deprived of the right to sell to any station in a separate community (for purposes of the network rule) by virtue of a contract or understanding with any station to whom the programming has already been sold

Id. at 2832 (citations omitted).

Although the review of the network territorial exclusivity rule was ancillary to the case, it confirms the Commission's position that as long as the ability to negotiate for affiliation is not

the Great Falls DMA or in any other market; the Commission's primary concern is that viewers in a market are able to receive network programming, and are not contractually prevented from doing so.

¹⁸ *Letter to The Helen Broadcasting Company*, 5 FCC Rcd 2829 (1990).

taken away from the parties, there is no violation of the rule ¹⁹

11. Sunbelt Has Shown a Commitment to Providing Valuable Public Service

Sunbelt and its licensee subsidiaries have established successful commercial full power television operations in various communities in Nevada, Arizona, Idaho, Montana and Wyoming. The stations provide a much-needed local voice to the various service areas with local news, weather, sports and other programming of public interest. In certain communities of license, Sunbelt has, among other things, established educational scholarships to help support students graduating from secondary schools in the geographic areas served by the stations.²⁰ It is this level of civic and broadcast commitment that resulted in Sunbelt entering into a positive business relationship with NBC for the broadcast of NBC programming in many of Sunbelt's markets. Not unlike other multi-station operators, who have more than one station affiliated with the same network, Sunbelt's successful performance has influenced NBC's affiliation decisions in other markets where Sunbelt operates stations ²¹ The affiliation agreements entered into between

¹⁹ Again, the lack of reported cases dealing with the limits on the territorial exclusivity granted to network affiliates is a strong indication that the Commission does not involve itself in private business disputes, and instead leaves matters of contractual dispute to the proper court that has jurisdiction. The Commission has properly limited its role relating to network affiliation agreements. These are contracts, and, if Max really feels that its rights under the NBC affiliation agreement have been breached, it has the right to seek redress in the courts, where such disputes are properly litigated.

²⁰ Sunbelt's commitment to educational pursuits at all levels is reflected in the honors accorded to Sunbelt's Chairman and major stockholder, Mr. James E. Rogers, for whom the University of Arizona Law School is named

²¹ Certain of these NBC-affiliated stations include KVBC(TV), Las Vegas, Nevada; KBAO(TV), Lewistown, Montana; KBBJ(TV), Havre, Montana; KSWY(TV) Sheridan, Wyoming; KTVH(TV), Helena, Montana; KPVI(TV), Pocatello, Idaho; and KJWY(TV), Jackson Hole, Wyoming. KBBJ and KBAO are authorized as satellite stations of KTVH(TV) (and therefore rebroadcast KTVH programming), and KJWY is authorized as a satellite station of KPVI(TV). Sunbelt provides NBC programming pursuant to a Time Brokerage Agreement to KCWY(TV), Casper, Wyoming, licensed to Sweetwater Broadcasting Company. The FCC has recognized that in light of the increasing media consolidation under the Commission's multiple

Sunbelt and NBC, copies of which have been filed with the FCC, contain terms and conditions customary for such programming/affiliation arrangements.²²

12 Sunbelt and NBC Have Acted In Compliance with the Commission's Rules.

As part of its ongoing relationship with NBC, and as already revealed to the Commission by Max in its Request, NBC informed Sunbelt in a letter dated April 26, 1999, that it had decided not to renew the NBC affiliation agreement with Max for KTGF(TV), Great Falls, Montana.²³ NBC then laid out certain factors Sunbelt would have to meet if it wanted to be considered as the NBC affiliate for both the Helena and Great Falls markets. First, NBC requested that Sunbelt improve the KTVH coverage to allow for greater coverage over Helena and Great Falls. In addition to the coverage provided by the satellite stations KBBJ and KBAO, both licensed to communities in the Great Falls DMA, Sunbelt filed the KTVH Booster Application. It also plans to establish a news bureau that will compete with the ABC and CBS affiliate news bureaus currently serving Great Falls. *See* Request, Exhibit 1. The NBC correspondence and Sunbelt's attempt to meet the prerequisites, show there was no requirement or assertion made by Sunbelt to NBC that NBC had to award the affiliation to Beartooth and KTVH(TV). Indeed, the context of NBC's negotiations with Sunbelt indicate it is simply looking for a way to provide improved NBC service to viewers in the Great Falls DMA in the most effective manner.²⁴

ownership rules, "[n]etworks are often negotiating with group owners rather than individual station owners for affiliation agreements", and this multi-market affiliation approach is a commonly accepted practice in negotiations. *See* 1995 NPRM at para 16

²² As an example, under the NBC/Sunbelt affiliation agreements, copies of which are on file with the FCC, in the event Sunbelt or the licensee subsidiary rejects, preempts or otherwise fails to broadcast any NBC programming, then NBC has the right to license that programming to any other distribution/media outlet for distribution in the particular station's community of license

²³ A copy of this April 26 letter is included as part of Attachment 1 hereto.

²⁴ The two Sunbelt satellite stations in the Great Falls DMA, KTVH in Helena, and the proposed booster in Great Falls operate on VHF analog channels, which offer better technical off-air

13. There is no guarantee that the NBC affiliation for Great Falls would be given to Beartooth in the event it does not meet the NBC prerequisites. Neither NBC nor Sunbelt hold any unfair leverage over each other or is forcing the other to do something that would be contrary to either party's intent or business judgment. As the Commission has recognized,

[Section 73.658(b)] was not adopted to guarantee a station the right to carry network programming. Rather, in adopting this rule, the Commission was aware of the economic factors that play a role in network affiliation decisions. The territorial exclusivity rule was adopted only to give stations the 'maximum opportunity' to 'compete for network programming

Mullin Letter at 4417 (citations omitted).

As shown in the NBC correspondence provided by Max and Sunbelt, NBC is merely seeking affiliation agreements that best serve the network's audience and in providing Sunbelt and Beartooth the opportunity to compete in full compliance with the Commission's rules.

14. NBC's tentative conclusion to have one NBC affiliate provide coverage for the Great Falls and Helena markets is wholly consistent with the manner in which other network service in the two markets is provided. Great Falls and Helena are located only 50 miles apart. Currently, there is only one ABC affiliate and one CBS affiliate, both licensed to Great Falls, that serve both the Great Falls and Helena markets.²⁵ NBC's exploration of having KTVH, the satellites KBBJ and KBAO and the Great Falls booster provide service as the NBC affiliate to both Great Falls and Helena, is similar to what ABC and CBS already do in the same markets. And, the commitment to ensuring no loss in viewers as a result of the switch in affiliation, something NBC is requiring of Beartooth, serves the Commission's goal under Section

service than KTGF's UHF Channel 16. Since the Great Falls DMA has a relatively low cable penetration rate, the advantage of VHF over UHF coverage carries more weight.

²⁵ The ABC affiliate is KFBB-TV, and the CBS affiliate is KRTV(TV). Based upon the Commission's decision in the *Mullin Letter*, the only concern for the Commission is that the viewers in the Great Falls market have access to NBC network programming, if, in fact, NBC decides to have an affiliate in that market.

73.658(b) Therefore, there has been no deleterious effect on competition nor has there been anything even remotely improper in the conduct between the parties.²⁶

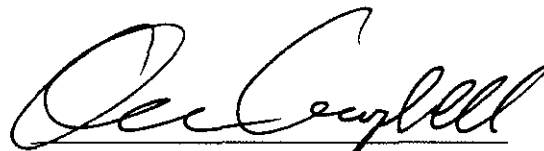
15. NBC made an independent business judgment that its affiliation agreement with KTGF(TV) was no longer efficient and desired, and began exploring alternative methods of providing NBC programming to the Great Falls and Helena markets. In light of the good existing relationships between NBC and Sunbelt, entering into negotiations with Beartooth for KTVH was not only obvious but one that makes sense in these markets. Instead of affiliating with two separate licensees in two overlapping communities, it is more efficient and cost effective to affiliate with one licensee that will better serve the NBC viewers located in the Great Falls DMA. For the Commission to question this business arrangement would create the exact chilling effect on network-affiliate relations the FCC has consistently made clear it wants to avoid. The Commission must not interfere with marketplace decisions and become involved in what is nothing more than a desperate effort by Max into forcing NBC to retain an affiliate it would prefer not to keep.

²⁶ As noted, it appears from the letter sent by Max to NBC October 22, 2003, that Max is the party engaged in troubling, if not illegal, behavior. Mr. Loving apparently made accusations against NBC that NBC found so "disturbing" it forwarded "them to our attorneys for review." See Request, Exhibit 4.

CONCLUSION

For the reasons set forth herein, there has been no violation of Section 73.658(b) of the Commission's Rules, and no issue has been raised that requires the Commission's interpretation of the scope of its network territorial exclusivity rule. Therefore, Sunbelt requests that the Commission promptly terminate this proceeding and expeditiously grant at least the KTVH Booster Application so that marketplace negotiations are what determine how NBC programming is broadcast to the Great Falls DMA.

Respectfully submitted,
Sunbelt Communications Company

A handwritten signature in black ink, appearing to read "Alan Campbell", written over a horizontal line.

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OFFICE OF THE SECRETARY

TO The Commission

**OPPOSITION OF SUNBELT COMMUNICATIONS COMPANY
TO REQUEST FOR EXPEDITED DECLARATORY RULING**

Sunbelt Communications Company ("Sunbelt"), by its attorneys, submits its Opposition to the "Request for Expedited Declaratory Ruling" (the "Request") filed by Max Media of Montana LLC ("Max") on February 25, 2004. For the reasons set forth herein, the Commission should dismiss Max's request that it issue a declaratory ruling concerning the territorial exclusivity of Section 73.658(b) of the Commission's rules and dismiss the Request.¹

¹ Section 73.658(b) of the Rules provides: No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another broadcast station located in the same community from broadcasting the network's programs not taken by the former station, or which prevents or hinders another broadcast station located in a different community from broadcasting any program of the network organization. This section shall not be construed to prohibit any contract, arrangement, or understanding between a station and a network organization pursuant to which the station is granted the first call in its community upon the programs of the network organization. As employed in this paragraph, the term "community" is defined as the community specified in the instrument of authorization as the location of the station. 47 C.F.R. § 73.658(b).

Issuance of a Declaratory Ruling Is Inappropriate

1 In asking the Commission to issue a declaratory ruling pursuant to Section 1.2 of the Rules, Max has failed to present a valid argument for relief and has focused on the wrong procedure. Requests for the issuance of a declaratory ruling are appropriate to terminate a controversy or remove uncertainty. But, that is not what is involved here. To the extent any uncertainty or controversy over the meaning of the territorial exclusivity provisions of Section 73.658(b) of the Rules exists, it is only in the imagination of Max. In reality, Max is misusing the Commission's regulations in an attempt to intrude on the business decisions of the NBC Television Network ("NBC") under a novel theory that has only recently occurred to it.

2. In essence, Max wants the Commission to prevent NBC from exercising its proper business judgment as to its affiliate serving the Great Falls, Montana DMA. It is difficult to pose a less appropriate matter upon which the Commission would issue a declaratory ruling, particularly on an "expedited" basis. As evident from the Declaration of A. Eugene Loving ("Loving"), Chairman and CEO of Max Media LLC, the parent of Max Media of Montana LLC submitted as Exhibit B to the Request, Max has been aware for years that its NBC affiliation which will expire in July 2005 is not likely to be renewed. Max has also been aware for a similar period that Sunbelt is the likely candidate to supplant KTGF-TV as the NBC affiliate in the Great Falls DMA.² Moreover, Max has filed at least three objections to various Sunbelt activities that are directly related to the "issue" that Max claims warrants the issuance of an

² As noted by Loving, Sunbelt already broadcasts the NBC network service on stations KBBJ-TV in Havre, Montana and KBAO-TV, Lewistown, Montana, both of which are located in the Great Falls DMA.

expedited declaratory ruling, none of which raises or even alludes to the network affiliation issue that Max now claims requires Commission attention on an expedited basis.³

3. In sum, no controversy or uncertainty exists that makes appropriate the issuance of a declaratory ruling by the Commission. Max, apparently sensing that it has not persuaded NBC to renew the affiliation of its soon-to-be-sold station KTGF-TV, is seeking regulatory relief where none is warranted.⁴ While Max may find it more difficult to sell KTGF-TV without the NBC affiliation, this is not a reason for the Commission to intervene in the private business decisions of its regulatees. Therefore, the Commission should decline Max's invitation and summarily dismiss the Request as not appropriate for the issuance of a declaratory ruling. Nevertheless, if the Commission elects to consider the "merits" of Max's claims, Sunbelt offers the following comments.

There Is No Violation of 73.658(b)

4. The gist of Max's complaint is simple, and the lack of merit is clear. Max argues

³ For example, on September 15, 2003, Beartooth Communications Company ("Beartooth"), Sunbelt's subsidiary which is the licensee of station KTVH-TV, Helena, Montana and an NBC affiliate located only 50 miles from Great Falls filed an application for a new booster station on Channel 12 at Great Falls. BNPTVB-20030915ACY. MMM License LLC ("MMM"), a subsidiary of Max and the licensee of KTGF-TV, filed an Informal Objection to this booster station application on November 19, 2003, and a Further Informal Objection to the application on December 24, 2003. On February 17, 2004, MMM filed a consolidated objection to numerous LPTV applications Beartooth filed in the most-recent filing window; some of these applications proposed new low power stations that would be located in the Great Falls DMA. In none of these pleadings did Max even bother to raise the NBC affiliation issue on which it now finds a need for expedited Commission action.

⁴ MMM filed an application to assign the KTGF-TV licenses to The KTGF Trust, Paul T. Lucci, Trustee, in order to meet the requirements of the Commission's multiple ownership rules while Max and the Trustee attempt to complete the sale of the station to an independent third party. See, BALCT-20040305ACI.

(Request, p 17) that the Commission should bar NBC from providing notice to Max in July 2004 (one year before the NBC affiliation agreement can be terminated in July 2005) that it is terminating the NBC affiliation for KTGF-TV, Great Falls, Montana, because an alleged "arrangement" between NBC and Sunbelt and/or subsidiaries of Sunbelt that Max claims violates the territorial exclusivity provisions of 73.658(b) ⁵ Unfortunately for Max, both the facts and prior Commission decisions fail to support its reckless charges, which are based on a strained interpretation of what it guesses may be a business arrangement between NBC and Sunbelt.

5 As noted above, KTGF-TV, Channel 16, is an affiliate of NBC, and is in the Great Falls, DMA. The licensee of KTGF-TV is MMM License LLC ("MMM"), whose ultimate parent is Max Media LLC. Beartooth is the licensee of KTVH-TV, Channel 12, Helena, Montana, assigned to the Helena, Montana DMA. Station KTVH-TV is also an affiliate of the NBC network. Two satellites of KTVH-TV (KBBJ-TV, Havre, Montana and KBAO-TV, Lewistown, Montana) are also affiliates of the NBC network, and are licensed to communities in the Great Falls, DMA. The communities of Helena and Great Falls are approximately 50 miles apart, and the Grade B contour of KTVH-TV encompasses all of the Great Falls metro area. Request, Exhibit I. At the time Max purchased KTGF-TV in 2001, it apparently failed to confirm that it had no assurance that NBC would renew its affiliation with the station when it expired in July 2005. Since discovering this problem, Max has engaged in a multi-faceted

⁵ Max is presented with a very real dilemma. It would like to remain on good terms with NBC, since the goal of its Request is to remain the NBC affiliate in Great Falls, Montana; however, its case is premised on the allegedly illegal "arrangement" between Sunbelt and NBC. If the "arrangement" constitutes a violation of the Commission rules, it is difficult to discern how one party to that arrangement, Sunbelt, can be guilty, while the other party, NBC, is innocent. Max's mystifying solution is simply to relieve NBC from any responsibility, Request, Note 19, which is an illogical conclusion.

misuse of the Commission's processes to harass Sunbelt, the filing of its meritless Request is simply its most recent action in this campaign, but likely not its last unless Max is admonished by the Commission to stop its abusive conduct

6 Max's theory that NBC and Sunbelt are engaged in misconduct is premised on inferences it draws from a few facts and documents that are taken out of context. Attachment 1 hereto is a copy of the April 26, 1999, letter from John F. Damiano, Senior Vice President, Affiliate Relations, to James E. Rogers, President of Sunbelt, a document Max characterizes as a critical element of the NBC-Sunbelt "arrangement". Request, p. 2. Insofar as the Request is concerned, this letter is straight forward. It provides in part that

Sixth: NBC had made a decision that it will not renew its affiliation agreement with Channel 16 [KTGF-TV] in Great Falls, Montana...It is NBC's understanding that if NBC does not renew that agreement, Beartooth...will establish a news bureau in Great Falls that would make KTVH in Helena competitive with the present ABC and CBS stations in Great Falls. It is NBC's further understanding that the signal from Channel 12 in Helena is either now or will be adequate to cover the Great Falls area so there will be no substantial reduction in viewership of NBC programming in the Great Falls DMA. Channel 12 in Helena, with the added coverage of Channel 9 in Havre and Channel 13 in Lewistown, will serve to further cover the Great Falls DMA presently covered by Channel 16 in Great Falls.

7. Nothing sinister can be inferred from this letter; it merely recounts factors that NBC would consider in deciding what station it will affiliate with and factors that it would consider in making this determination. However, the strain on the NBC-Max relationship is revealed in additional selected communications between Max and NBC that Max has included in its Request.⁶ As evident from this additional correspondence between NBC and Max, the

⁶ Interestingly, Max offers the Commission a limited view of what has transpired, and the unseen part is completely within its control. For example, Max submits three communications from NBC to Max (Loving Declaration, Exhibits 2, 3, and 4). In each instance, the document

relationship between the companies is deteriorating. NBC characterizes an undisclosed letter from Loving to NBC dated August 10, 2001 as follows "Although I disagree with many of the assertions set forth in the letter, I do not wish to refute each point or correct each fact at this time . " Loving Declaration, Exhibit 2. By October 22, 2003, Loving had succeeded in being rebuked by NBC as follows "[y]ou have misinterpreted my letter to you dated October 16 I also find many of your comments and implied accusations disturbing and have forwarded them to our attorneys for review." Loving Declaration, Exhibit 4.

8. The limited material that Max submits in support of its Request demonstrates that NBC had a good relationship with Sunbelt, it would not renew the KTGF-TV affiliation when it expires in July 2005; it will exercise its normal business judgment as to what to do at that time; and based on Sunbelt meeting certain criteria it was planning to affiliate with Beartooth in July 2005, but: "[i]f these criteria are not satisfied, NBC will use its business judgment and discretion to determine which station it wishes to be the NBC affiliate, as it has traditionally done upon the expiration of affiliation agreements." Loving Declaration, Exhibit 2.

9. Contrary to Max's speculation, there is absolutely nothing in the relationship between NBC and Sunbelt that suggests that Sunbelt holds leverage over NBC that would prevent NBC from exercising its independent business judgment as to its affiliate in the Great Falls DMA. The assertion by Max that NBC could not exercise its independent business judgment on this issue (Request, p 15) is false and reckless, premised on unbridled speculation,

authored by an NBC official references prior communications from Max, which Max has elected not to disclose See, references to Loving letters to NBC dated August 10, 2001 (Loving Declaration, Exhibit 2); September 2 [2003] (Id., Exhibit 3) and October 16 [2003] (Id., Exhibit 4)

and is unsupported by the facts or even reasonable inferences that may be drawn from the limited documentation offered by Max

10 In short, Max is asking the Commission to grant it extraordinary relief on an expedited basis, but without a viable factual predicate. Likewise unpersuasive is Max's strained and erroneous analysis of prior Commission decisions regarding 73 658(b), of which Max notes there "have been very few reported decisions." Request, p. 12. Indeed, the only case on which Max relies, *Letter to Eugene F. Mullin*, 10 FCC Rcd 4416 (MMB 1995) (hereinafter, "*Phoenix*"), undercuts Max's Request. *Phoenix* involved a switch in the ABC television network affiliate in the Phoenix, Arizona market. Max tries, and fails, to distinguish *Phoenix* on the ground that both stations involved were licensed to Phoenix, Arizona, whereas, in its Request, the primary Sunbelt station, KTVH-TV, is licensed to the Helena DMA. Request, p. 14.⁷ However, this is a distinction that has no bearing on the Max Request, and did not determine the outcome in *Phoenix*. In fact, *Phoenix* supports the prompt dismissal of the Request.

11. In *Phoenix*, Media America Corporation ("MAC") was the ABC affiliate in the market. Scripps Howard Broadcasting Company ("Scripps") was the licensee of the FOX affiliate in the market, but FOX moved its affiliation to another station. In turn, ABC switched its affiliation in the market from MAC to Scripps, and MAC filed a petition to revoke the

⁷ Of course, Max's analysis ignores the facts that two Sunbelt NBC affiliates (KBBJ-TV, Havre, Montana and KBAO-TV, Lewistown, Montana) are licensed to communities in the Great Falls DMA. In addition and further complicating Max's analysis are the facts that KTVH-TV in Helena provides a Grade B signal to the Great Falls metro area and over most of the area within the KTGF-TV Grade B contour (Request, Exhibit I), that Sunbelt has applied for a booster station in Great Falls and additional LPTV stations in the Great Falls DMA, and that Sunbelt has committed to opening a news bureau and sales office in Great Falls

licenses of Scripps' stations in Detroit, Cleveland as well as in Phoenix on the ground that ABC and Scripps had entered into a multi-market affiliation agreement involving those three markets in violation of the territorial exclusivity provisions of 73 658(b). MAC alleged that ABC's decision to switch affiliates in Phoenix was based not on the merits of which station should be its affiliate there, but in order to retain Scripps as its affiliate in Detroit and Cleveland. MAC further alleged that Scripps advised ABC that in order to keep Scripps as its affiliate in Detroit and Cleveland, it had to give it the ABC affiliation in Phoenix.

12 Scripps and ABC countered that a multi-market affiliation agreement was in place, and that the decision in Phoenix was based on the totality of the facts, including knowledge that CBS was looking for new affiliates in the Detroit and Cleveland markets, and the decision on the ABC affiliate in Phoenix was based on factors beyond just Phoenix. The Commission denied MAC's petition. In doing so, the Commission framed the issue as: "whether a multi-market agreement, which results in the shift of affiliates in a community of license because of concerns with other markets, also part of that agreement, violates our territorial exclusivity rule." *Id.*, at 4416

13 The Commission's decision in *Phoenix* clearly supports the summary dismissal of Max's Request. In reaching its decision in *Phoenix*, the Commission noted that:

networks have no obligation to affiliate with a particular station and...the Commission will not ordinarily interfere with the business judgments of networks

* * *

A network's decision to switch affiliates in a community of license, even if such a change arises as a result of a multi-market agreement, does not threaten the public's interest in market-based network service and is not the kind of agreement or understanding that falls within the intended scope of [73.658(b)].

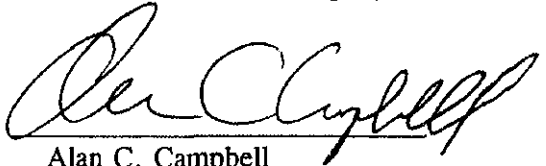
Id , at 4417

14 The fact that different cities of license (Great Falls and Helena) are involved in Max's Request does not change the outcome. Section 73.658(b) is intended to ensure that the public has access to network service; and the Commission is not interested in which network affiliate provides that service. If NBC concludes in its judgment that Sunbelt/KTVH-TV will better serve its audience in the Great Falls DMA than would Max/KTGF-TV, then the Commission will not second guess or interfere with that judgment, nor should it. Obviously, NBC wants to be competitive in and reach viewers in the Great Falls market. If its ultimate business decision is that this can best be accomplished through affiliation with KTVH-TV and the other Sunbelt stations and facilities in place of KTGF-TV, that is not a decision with which the Commission should become embroiled. And, if a factor in that equation is NBC's good relationship with Sunbelt and its subsidiaries versus an affiliate like Max that levels comments and implied accusations against NBC that the network finds so disturbing that they are forwarded to NBC's counsel for review (Loving Declaration, Exhibit 4), that is a relevant factor that might well influence NBC's ultimate decision.

Conclusion

There is no merit to the request by Max Media that the Commission initiate a declaratory ruling proceeding to plumb the territorial exclusivity limits encompassed in Section 73 658(b) of the Rules. The Request should be summarily dismissed.

Respectfully submitted,
Sunbelt Communications Company

By. 

Alan C. Campbell
Jason S. Roberts

Its Attorneys

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March 10, 2004

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A Division of
National Broadcasting
Company, Inc.

John F. Damiano
Sr. Vice President
Affiliate Relations

ATTACHMENT 1



April 26, 1999

Mr. James E. Rogers
President
Sunbelt Communications Company
1500 Foremaster Lane
Las Vegas, Nevada 89101

Dear Jim:

I am writing in reference to the several initiatives which Sunbelt Communications, through its various subsidiaries, has undertaken in various Mountain Time zone markets involving the NBC Television network. Some of these may take time to implement, but this letter will indicate an ongoing commitment between our two companies in these areas. Obviously, the contents of this correspondence are confidential.

First, should the results of research being conducted in Havre and Lewistown indicate to NBC the potential to increase its network performance, NBC will agree to affiliate with satellites of Channel 12 KTVH, the NBC affiliate in Helena, Montana as soon as those two satellites become operational. Those satellites will be constructed in Havre, Montana and Lewistown, Montana. There will be no additional financial compensation for KTVH or its satellites.

Second, NBC agrees to transfer its network affiliation from KTWO in Casper, Wyoming to Sunbelt Communications, or one of Sunbelt's subsidiaries, at the conclusion of NBC's current Casper affiliation agreement. At such time as Sunbelt has an operational facility in Casper to broadcast all the NBC programming, NBC will notify the present affiliate in Casper that NBC will not renew KTWO's affiliation agreement when it expires. Should KTWO then wish to terminate its affiliation agreement with NBC before the affiliation agreement would otherwise terminate, Sunbelt's facilities in Casper would begin to broadcast NBC's programming in Casper as soon as the present owner and NBC are free of any contractual obligations. NBC understands that Sunbelt Communications will provide facilities and staff and news programming at least equal to that in Sunbelt's NBC station in Helena, Montana, but not less than KTWO has provided its viewers at any time in the past. The news operation will be extended to any Wyoming satellites of Sunbelt's Casper broadcast facility at such time as NBC agrees to affiliate with such Wyoming satellite station.

Third, as a reaffirmation of our previous verbal agreement with Sunbelt, NBC agrees that a station to be constructed by Sunbelt in Sheridan, Wyoming on Channel 9, on which Sunbelt holds a construction permit, will become the NBC affiliate or satellite at such time as broadcast facilities are completed and the station begins telecasting.



Page Two
Letter to J. Rogers -- Sunbelt Communications
April 26, 1999

Fourth, NBC agrees to the transfer of KJWY in Jackson, Wyoming, currently an NBC satellite of KPVI, the NBC station in Pocatello-Idaho Falls, Idaho, to the status of an NBC satellite station of Sunbelt's Casper station when Sunbelt's Casper station becomes affiliated with NBC

Fifth, NBC would agree that as Sunbelt Communications acquires other satellite locations within the State of Wyoming, on which Sunbelt would supply Wyoming news programming, NBC would give serious consideration, consistent with its affiliation policies, to make those stations NBC satellite affiliate stations. In no circumstance could Sunbelt construct satellites or translators in states adjacent to Wyoming to serve Wyoming viewers without express written consent from NBC

Sixth, NBC had made a decision that it will not renew its affiliation agreement with Channel 16 in Great Falls, Montana. That agreement will not expire until July 2005. It is NBC's understanding that if NBC does not renew that agreement, Beartooth Communications Company, the NBC affiliate in Helena, Montana, will establish a news bureau in Great Falls that would make KTVH in Helena competitive with the present ABC and CBS stations in Great Falls. It is NBC's further understanding that the signal from Channel 12 in Helena is either now or will be adequate to cover the Great Falls area so there will be no substantial reduction in viewership of NBC programming in the Great Falls DMA. Channel 12 in Helena, with the added coverage of Channel 9 in Havre and Channel 13 in Lewistown, will serve to further cover the Great Falls DMA presently covered by Channel 16 in Great Falls

NBC and Sunbelt have had a great partnership and our future should prove even more positive for you and us. We look forward to working with you for many years to come.

Sincerely,

JFR:am

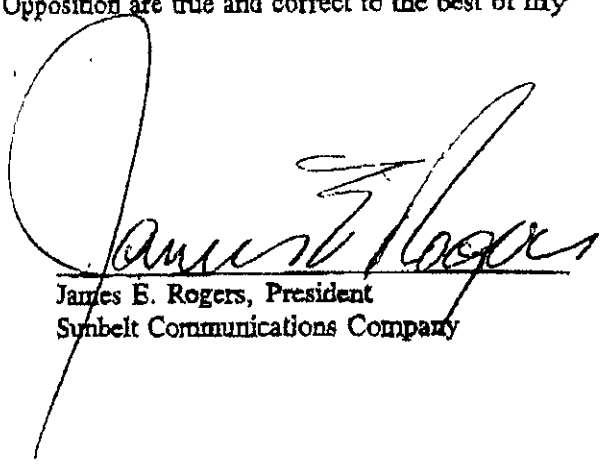
Cc: L Alden
J Dietze
J Kritch

Declaration of James E. Rogers

I, James E. Rogers, declare under penalty of perjury that.

1. I am the President of Sunbelt Communications Company ("Sunbelt"). I have reviewed the "Opposition of Sunbelt Communications Company To Request For Expedited Declaratory Ruling"

2. The facts set forth in Sunbelt's Opposition are true and correct to the best of my knowledge, information and belief.



James E. Rogers, President
Sunbelt Communications Company

March 10, 2004

CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 10th day of March 2004, a copy of the foregoing "Comments of Sunbelt Communications Company in Response to Request for Expedited Declaratory Ruling" has been served by first-class United States mail, postage prepaid, upon the following:

Michael K. Powell, Chairman*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Kathleen Q. Abernathy, Commissioner*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

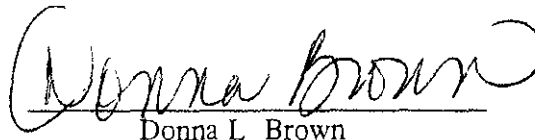
Michael J. Copps, Commissioner*
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Washington, DC 20016-2517


Donna L. Brown

*Via hand delivery

DECLARATION

James E. Rogers, declares as follows:

1 I am Chairman, CEO and major stockholder of Sunbelt Communications Company, which either itself or through various subsidiaries, is the licensee of commercial full power television stations in Nevada, Arizona, Idaho, Montana and Wyoming.

2. I have reviewed the attached Comments to the Request for Expedited Declaratory Ruling, and the factual statements set forth therein are true and correct to the best of my knowledge and belief

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 28, 2004

/s/ James E. Rogers

James E. Rogers

CERTIFICATE OF SERVICE

I, Donna L. Brown, do hereby certify that on this 28th day of April 2004, a true and correct copy of the foregoing "Comments to Request for Expedited Declaratory Ruling" was sent via United States mail, postage prepaid, to the following persons:

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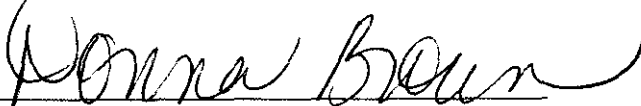
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Donna L. Brown

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